

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ODELL BRIAN HUNTER,

Defendant-Appellant.

UNPUBLISHED

April 3, 2008

No. 272873

Wayne Circuit Court

LC No. 06-005688-01

Before: Kelly, P.J., and Owens and Schuette, JJ.

PER CURIAM.

The prosecutor appeals as of right from an order granting defendant's motion to suppress evidence and dismissing the charges against defendant. We reverse and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

An officer stopped defendant's vehicle after observing an occupant thereof enter and quickly exit a motel room in an area known for prostitution and drug activity. The stop was based on the fact that the vehicle's rear license plate lamp was not operating. The officer testified that he "I.D.'d the occupants" and discovered that the passengers had outstanding warrants. There were no warrants for defendant, who was the driver. The passengers were ordered out of the vehicle, and were arrested. Defendant was asked to get out of the vehicle so that a search incident to the occupants' arrest could be performed. The officer explained that defendant was then patted down for safety. Defendant admitted that the lump in his pocket was cocaine, and that he had a gun in the car.

The trial court concluded that after defendant produced a valid license and valid paperwork for the vehicle, the officer's request for identification and other information from the passengers was an unlawful intrusion. We disagree.

We review a trial court's findings of fact on a motion to suppress for clear error, and review the ultimate decision de novo. *People v Darwich*, 226 Mich App 635, 637; 575 NW2d 44 (1997).

There was no evidence that the officer did anything more than ask to see the occupants' identification. In *People v Taylor*, 454 Mich 580, 590; 564 NW2d 24 (1997), overruled on other grounds, *People v Kazmierczak*, 461 Mich 411; 605 NW2d 667 (2000), this Court stated:

Officer Walendzik did not violate the Fourth Amendment by merely approaching the vehicle in a public place and asking defendants [the driver and occupants of the vehicle] if they were willing to answer some questions. *While this initial encounter was justified as a mere inquiry, and thus was reasonable without a showing of probable cause*, the level of intrusion upon the defendants escalated to a seizure requiring probable cause when Officer Walendzik summoned dispatch for back-up. [Emphasis added].

Here, the Fourth Amendment did not preclude the officer from asking the occupants for identification. The trial court erred in concluding that this was an unlawful intrusion.

The trial court also erred in holding that the officer could not search the vehicle as a search incident to the occupants' arrest. In *People v Mungo*, ___ Mich App ___; ___ NW2d ___ (2008), this Court held:

The Supreme Court of the United States has clearly indicated a preference for a bright line rule for warrantless searches incident to lawful arrests. Considering this preference in light of the limitations on legitimate expectations of privacy in one's car, we conclude *automobile searches incident to the arrest of an automobile passenger are constitutionally permissible, even when there is no reason to believe the car contains evidence that the driver of the car is engaged in illegal activity*. [*Id.*, slip op at 4 (Emphasis added)].

Quoting *New York v Belton*, 453 US 454, 460; 101 S Ct 2860; 69 L Ed 2d 768 (1981), the *Mungo* Court went on to state:

“[W]hen a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile.” . . . This is precisely what occurred in this case. Deputy Stuck made an arrest of Dixon, an occupant of the vehicle owned and operated by defendant. Consequently, Deputy Stuck was constitutionally permitted to conduct a search of the passenger compartment of defendant's car. [*Mungo, supra* at 6].

The present case is indistinguishable. The search of defendant's car was permissible as a search incident to the occupants' arrests.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly
/s/ Donald S. Owens
/s/ Bill Schuette